

CARLOS JIMENEZ, Bar No. 227534
cajimenez@littler.com
KIMBERLI A. WILLIAMS, Bar No. 318741
kawilliams@littler.com
LITTLER MENDELSON, P.C.
633 West 5th Street
63rd Floor
Los Angeles, CA 90071
Telephone: 213.443.4300
Fax No.: 213.443.4299

Attorneys for Defendants
PRAXAIR, INC. and PRAXAIR
DISTRIBUTION, INC.

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

RITA GARCIA, individually, and on
behalf of all others similarly situated,

Plaintiff,

v.

PRAXAIR, INC., a Delaware
corporation; PRAXAIR
DISTRIBUTION, INC., a Delaware
corporation; and DOES 1 through
10, inclusive,

Defendants.

Case No. 3:18-cv-03887

**DEFENDANTS' NOTICE OF
REMOVAL OF CIVIL ACTION TO
FEDERAL COURT**

[28 U.S.C. §§ 1332, 1441, & 1446]

Complaint Filed on May 18, 2018

1 **TO THE CLERK OF THE UNITED STATES DISTRICT COURT FOR**
2 **THE NORTHERN DISTRICT OF CALIFORNIA, PLAINTIFF RITA GARCIA**
3 **AND HER ATTORNEYS OF RECORD:**

4 PLEASE TAKE NOTICE that Defendants Praxair, Inc.¹ (“Praxair”) and Praxair
5 Distribution, Inc. (“PDI”) (collectively “Defendants”) hereby remove the above-
6 entitled action brought by Plaintiff Rita Garcia (“Plaintiff”) in the Superior Court of
7 the State of California, County of Alameda, to the United States District Court for the
8 Central District of California, pursuant to 28 U.S.C. §§ 1332(d) (Class Action
9 Fairness Act of 2005 or “CAFA”), and 1446 on the following grounds:

10 **I. STATEMENT OF JURISDICTION & VENUE**

11 1. This Court has original jurisdiction over this action under the Class
12 Action Fairness Act of 2005. *See* 28 U.S.C. § 1332(d). In relevant part, CAFA grants
13 district courts original jurisdiction over civil class actions filed under federal or state
14 law in which any member of a class of plaintiffs is a citizen of a state different from
15 any defendant and where the amount in controversy for the putative class members in
16 the aggregate exceeds the sum or value of \$5,000,000, exclusive of interest and costs.
17 CAFA authorizes removal of such actions in accordance with 28 U.S.C. § 1446.

18 2. This Court has jurisdiction over this case under CAFA, 28 U.S.C.
19 §1332(d), and this case may be removed pursuant to the provisions of 28 U.S.C. §
20 1441(a), in that it is a civil class action wherein: (1) the proposed class contains at
21 least 100 members; (2) Defendants are not a state, state official or other governmental
22 entity; (3) the total amount in controversy for all putative class members exceeds
23 \$5,000,000; and, (4) there is diversity between at least one class member and
24 Defendants.

25 3. CAFA’s diversity requirement is satisfied when at least one plaintiff is a

26 _____
27 ¹ Praxair, Inc. did not employ Plaintiff or any of the putative class members that she
28 seeks to represent. (Miranda Decl., ¶ 5.) Accordingly, Defendants will immediately
request and/or seek to dismiss Praxair, Inc. from this matter.

1 citizen of a state in which the defendant is not a citizen. *See* 28 U.S.C. §§
2 1332(d)(2)(A), 1453.

3 4. As set forth below, this case meets all of CAFA's requirements for
4 removal and is timely and properly removed by the filing of this Notice.

5 5. This action was filed in the Superior Court for the State of California for
6 the County of Alameda. Accordingly, venue properly lies in the United States District
7 Court for the Northern District of California pursuant to 28 U.S.C. §§ 84, 1391, 1441
8 and 1446.

9 **II. PLEADINGS, PROCESSES & ORDERS**

10 6. On May 18, 2018, Plaintiff, on behalf of herself and other members of
11 the general public similarly situated, commenced this action by filing a class action
12 complaint in the Superior Court of California, County of Alameda, entitled *Rita*
13 *Garcia, individually, and on behalf of all others similarly situated, v. Praxair, Inc., a*
14 *Delaware corporation; Praxair Distribution, Inc., a Delaware corporation; and*
15 *DOES 1 through 10, inclusive*, designated as Case No. RG18905648 ("Complaint").
16 A true and correct copy of the Complaint is attached to this Notice of Removal as
17 **Exhibit A**. Plaintiff and the members of the putative class she purports to represent
18 are "[a]ll persons who worked for any Defendant in California as an hourly paid, non-
19 exempt employee at any time during the period beginning four years before the filing
20 of the initial complaint in this action and ending when notice to the Class is sent."
21 (Compl., ¶ 24.)

22 7. In the Complaint, Plaintiff, an employee of PDI, alleges the following
23 causes of action on her behalf and on the behalf of the putative class members: (1)
24 Failure to Pay Minimum and Straight Time Wages [Cal. Lab. Code §§ 204, 1194,
25 1194.2, and 1197]; (2) Failure to Pay Overtime Compensation [Cal. Lab. Code §§
26 1194 and 1198]; (3) Failure to Provide Meal Periods [Cal. Lab. Code §§ 226.7 and
27 512]; (4) Failure to Authorize and Permit Rest Breaks [Cal. Lab. Code §§ 226.7]; (5)
28 Failure to Time Pay Final Wages at Termination [Cal. Lab. Code §§ 201-203]; (6)

1 Failure to Provide Accurate Itemized Wage Statements [Cal. Lab. Code §§ 226]; and
2 (7) Unfair Business Practices [Cal. Bus. & Prof. Code §§ 17200, *et seq.*].

3 8. This action was brought as a putative class action pursuant to California
4 Code of Civil Procedure § 382, which authorizes actions be brought by one or more
5 representative persons as a class, similar to Rule 23 of the Federal Rules of Civil
6 Procedure.

7 9. On or about May 29, 2018, Defendants were served with a Notice of
8 Hearing regarding a Complex Determination Hearing and Case Management Hearing.
9 A true and correct copy of this Notice of Hearing is attached to this Notice of
10 Removal as **Exhibit B**.

11 10. At the time of filing this Notice of Removal, Defendants had not been
12 served with the Complaint.

13 11. Because the Doe defendants have not yet been served, they need not join
14 or consent to Defendants' Notice of Removal. *Salveson v. Western States Bankcard*
15 *Ass'n*, 731 F.2d 1426, 1429 (9th Cir. 1984) (named defendants not yet served in state
16 court action need not join the notice of removal). Furthermore, CAFA permits any
17 defendant to unilaterally remove the action if the requirements of CAFA for removal
18 are met, as they are here. *See* 28 U.S.C. §1453(b).

19 12. To Defendants' knowledge, no further process, pleadings, or orders
20 related to this case have been filed in in the Superior Court of the State of California,
21 County of Alameda.

22 **III. TIMELINESS OF REMOVAL**

23 13. An action may be removed from state court by filing a notice of removal,
24 together with a copy of all process, pleadings, and orders served on the defendant,
25 within 30 days of defendant receiving the initial pleading. *See* 28 U.S.C. § 1446(b);
26 *Murphy Bros, Inc. v. Mitchetti Pipe Stringing, Inc.*, 526 U.S. 344, 354 (1999) (the 30-
27 day removal period runs from the service of the summons and complaint). Because
28 Defendants have not yet been served with the Complaint, removal of this action is

1 timely because the notice of Notice of Removal has been filed within 30 days of
2 service. 28 U.S.C. § 1446(b).

3 14. On or about June 27, Defendants filed their Answer to Plaintiff's Class
4 Action Complaint. A true and correct copy of Defendants' Answer is attached to this
5 Notice of Removal as **Exhibit C**.

6 **IV. DIVERSITY OF CITIZENSHIP**

7 15. CAFA's minimal diversity requirement is satisfied, inter alia, when "any
8 member of a class of plaintiffs is a citizen of a State different from any defendant." 28
9 U.S.C. §§ 1332(d)(2)(A); 1453(b). In a class action, only the citizenship of the named
10 parties is considered for diversity purposes and not the citizenship of the class
11 members. *Snyder v. Harris*, 394 U.S. 332, 339-40 (1969). Minimal diversity of
12 citizenship exists here because Plaintiff and Defendants are citizens of different states.

13 **A. Plaintiff is a citizen of California.**

14 16. For diversity purposes, a person is a "citizen" of the state in which he or
15 she is domiciled. *See Kantor v. Wellesley Galleries, Ltd.*, 704 F.2d 1088 (9th Cir.
16 1983); *see also LeBlanc v. Cleveland*, 248 F.3d 95, 100 (2d Cir. 2001) (citizenship
17 determined at the time the lawsuit is filed); *see also Lundquist v. Precision Valley*
18 *Aviation, Inc.*, 946 F.2d 8, 10 (1st Cir. 1991). A person's domicile is the place he or
19 she resides with the intention to remain, or to which he or she intends to return. *See*
20 *Kanter v. Warner-Lambert Co.*, 265 F.3d 853, 857 (9th Cir. 2001). Plaintiff was at the
21 time of the filing of this action a resident of the State of California. (Compl., ¶ 7.)
22 Accordingly, Plaintiff is a citizen of the State of California.

23 **B. Defendants are citizens of Delaware and Connecticut.**

24 17. For diversity purposes, a corporation is a citizen of its state of
25 incorporation and the state where it has its principal place of business. 28 U.S.C. §
26 1332(c)(1). A corporation's principal place of business refers to its nerve center or, in
27 other words, the location where the corporation's high level officers direct, control
28 and coordinate the corporation's activities. *See Hertz Corp. v. Friend*, 559 U.S. 77,

1 80-81, 92-95 (2010). Except in unusual circumstances, a corporation's corporate
2 headquarters is in its 'nerve center.' *Id.*

3 18. Praxair is, and was at the time this action was commenced, a corporation
4 organized and formed under the laws of the State of Delaware. *See* Declaration of
5 Kristin Miranda (hereafter "Miranda Decl."), ¶ 3. Praxair's corporate headquarters
6 are located in Danbury, Connecticut and its executive officers direct, control, and
7 coordinate the corporation's activities and executive functions from its corporate
8 headquarters in Danbury, Connecticut. (Miranda Decl., ¶ 3; *See Breitman v. May Co.*
9 *California*, 37 F.3d 562, 564 (9th Cir. 1994) (corporation is citizen of state in which
10 its corporate headquarters are located and where its executive and administrative
11 functions are performed.)) Danbury, Connecticut is therefore Praxair's principal place
12 of business. Accordingly, Praxair is not a citizen of the State in which this action is
13 pending and is a citizen of a different State than that of Plaintiff.

14 19. PDI is, and was at the time this action was commenced, a corporation
15 organized and formed under the laws of the State of Delaware. (Miranda Decl. ¶ 4.)
16 PDI's corporate headquarters are located in Danbury, Connecticut and its executive
17 officers direct, control, and coordinate the corporation's activities and executive
18 functions from its corporate headquarters in Danbury, Connecticut. (Miranda Decl., ¶
19 4; *See Breitman v. May Co. California*, 37 F.3d 562, 564 (9th Cir. 1994) (corporation
20 is citizen of state in which its corporate headquarters are located and where its
21 executive and administrative functions are performed.)) Danbury, Connecticut is
22 therefore PDI's principal place of business. Accordingly, PDI is not a citizen of the
23 State in which this action is pending and is a citizen of a different State than that of
24 Plaintiff.

25 20. Plaintiff is a citizen of California, Defendants are citizens of Delaware
26 and Connecticut, therefore the minimal diversity requirement of 28 U.S.C. section
27 1332(d)(2)(A) is satisfied.

28 21. Defendants Does 1 through 50 are fictitious. The Complaint does not set

1 forth the identity of or any allegations against these Defendants as individuals. Their
2 citizenship should be disregarded for the purposes of determining diversity
3 jurisdiction. 28 U.S.C. § 1441(a); *see also Fristoe v. Reynolds Metals Co.*, 615 F.2d
4 1209, 1213 (9th Cir. 1980).

5 **V. PROPOSED CLASS CONTAINS AT LEAST 100 MEMBERS**

6 22. At all relevant times, Plaintiff was employed by Defendants as a
7 laboratory technician. (Compl., ¶ 7.) Plaintiff seeks to represent current and former
8 hourly, non-exempt employees of Defendants in the State of California during the
9 period of May 18, 2014 through the issuance of class notice. (Compl., ¶ 24.)

10 23. PDI has employed at least 634 current and former non-exempt employees
11 in the State of California between May 18, 2014 and June 22, 2018. (Miranda Decl., ¶
12 6.)

13 **VI. DEFENDANTS ARE NOT GOVERNMENTAL ENTITIES**

14 24. Defendants are not states, state officials, or other governmental entities.
15 Defendants are corporations organized and formed under the laws of the State of
16 Delaware. (Miranda Decl., ¶¶ 3-4.)

17 **VII. AMOUNT IN CONTROVERSY EXCEEDS \$5,000,000²**

18 25. The CAFA requires the “matter in controversy” to exceed “the sum or
19 value of \$5,000,000 exclusive of interest and costs.” 28 U.S.C. § 1332(d)(2). “The
20 claims of the individual class members shall be aggregated to determine whether the
21 matter in controversy exceeds” this amount. 28 U.S.C. § 1332(d)(6). Here, Plaintiff
22 does not allege the amount in controversy in the Complaint, but does allege that the
23 damages for her first and second causes of action will “exceed the jurisdictional
24 minimum of this Court.” (Compl. ¶¶ 36 & 46.) However, the face of the Complaint
25 clearly demonstrates that the amount in controversy in this case exceeds \$5,000,000.

26 _____
27 ² The alleged damages calculations contained herein are for purposes of removal only.
28 Defendants deny that Plaintiff is entitled to any relief whatsoever and expressly
reserves the right to challenge Plaintiff’s alleged damages in this case.

1 26. A defendant seeking to remove a case to federal court need only file “a
2 notice of removal ‘containing a short and plain statement of the grounds for removal’”
3 as stated under 28 U.S.C. section 1446(a). *Dart Cherokee Basin Operating Co., LLC*
4 *v. Owens*, 135 S. Ct. at 553. According to the United State Supreme Court, “[b]y
5 design, §1446(a) tracks the general pleading requirement stated in Rule 8(a) of the
6 Federal Rules of Civil Procedure” and thus, on removal, federal courts are to accept
7 the defendant’s “amount-in-controversy allegation when not contested by the plaintiff
8 or questioned by the court.” *Id.* Accordingly, “a defendant’s notice of removal need
9 include only a plausible allegation that the amount in controversy exceeds the
10 jurisdictional threshold.” *Id.* at 554.

11 27. Defendants expressly deny any liability for the damages alleged in
12 Plaintiff’s Complaint. However, for purposes of determining whether the minimum
13 amount in controversy has been satisfied, the Court must presume that Plaintiff will
14 prevail on his claims. *Kenneth Rothschild Trust v. Morgan Stanley Dean Witter*, 199
15 F. Supp. 2d 993, 1001 (C.D. Cal. 2002) (citing *Burns v. Windsor Ins. Co.*, 31 F.3d
16 1092, 1096 (11th Cir. 1994) (stating that the amount in controversy analysis presumes
17 that “plaintiff prevails on liability”). The ultimate inquiry is what amount is put “in
18 controversy” by plaintiff’s complaint, not what defendant might actually owe. *Rippee*
19 *v. Boston Market Corp.*, 408 F. Supp. 2d 982, 986 (S.D. Cal. 2005).

20 28. Plaintiff alleges Defendants “[failed] to pay minimum and straight time
21 wages, [failed] to pay overtime wages, [failed] to provide meal periods, [failed] to
22 authorize and permit rest periods, [failed] to maintain accurate records of hours
23 worked and meal periods, [failed] to timely pay all wages to terminated employees,
24 and [failed] to furnish accurate wage statements.” (Compl., ¶ 1; see also, ¶¶ 4 & 15-
25 21.) Plaintiff also alleges a cause of action for violation of the Unfair Competition
26 Law (“UCL”), Business and Professions Code § 17200, *et seq.* (Compl., ¶¶ 73-90.)
27 Alleging a UCL violation extends the statute of limitations of several of Plaintiff’s and
28 the putative class’ wage and hour claims from three to four years from the filing of the

1 Complaint, which in this case, extends the statute of limitations to May 18, 2014. *See*
2 Cal. Bus. & Prof. Code § 17208; *Cortez v. Purolater Air Filtration Products Co.*, 23
3 Cal. 4th 163, 178-79 (2000) (four-year statute of limitations for restitution of wages
4 under the UCL). Plaintiff seeks to recover on behalf of herself and the putative class
5 members damages arising from this alleged conduct, including: penalties; general
6 damages and/or restitution; special damages (including lost wages and interest); costs;
7 and attorneys' fees. (Compl., Prayer for Relief.)

8 29. Between May 18, 2014 and June 22, 2018, PDI employed at least 634
9 current and former hourly, non-exempt employees California, with an average hourly
10 rate of \$23.03. (Miranda Decl., ¶ 6.) Based on the available employment records, the
11 time period Plaintiff has placed at issue, and the number of employees at issue,
12 Plaintiff has placed 79,693 workweeks in controversy, based on the hire and
13 termination dates of the putative class members. Plaintiff was hired in April 2008, but
14 is currently on workers' compensation leave. (Miranda Decl., ¶ 10.) Thus, Plaintiff
15 worked a total of 117 workweeks during the statutory period prior to going on leave.

16 **A. Unpaid Minimum Wage and Unpaid Straight Time Claim**

17 30. By way of her first cause of action, Plaintiff and the putative class seek
18 allegedly unpaid minimum/straight time wages and liquidated damages equal to the
19 amount of unpaid wages pursuant to California Labor Code §§ 1194, 1194.2 and 1197.
20 (Compl., ¶¶ 31-40.) Plaintiff does not allege any relevant factual basis for this claim
21 other than alleging that "Defendants knowingly failed to pay Plaintiff and the Class
22 compensation for all hours worked." (Compl., ¶¶ 15-16, & 33.) Nor does Plaintiff
23 limit this claim in some manner, for instance, stipulating that only certain shifts are at
24 issue. Accordingly, at this juncture each work day and/or workweek of each putative
25 class member during the putative class period is in controversy.

26 31. A conservative estimate of the amount in controversy for Plaintiff's
27 minimum wage claim would equal **\$741,780.00**. This assumes Plaintiff and the
28 putative class seek only one hour of wages for off-the-clock work per workweek, at

1 the California 2016 state minimum wage of \$10.00³, that all employees worked for
2 only 117 workweeks (the same amount of workweeks Plaintiff worked [see ¶ 29]),
3 and Plaintiff nor the putative class recover any liquidated damages for this claim.⁴
4 The unpaid minimum wage owed would thus be **\$741,780.00** (\$10.00 x 634 x 117
5 weeks).

6 32. Assuming Plaintiff and the class members are owed one hour of unpaid
7 minimum wage for all workweeks worked during the class period, and recovered
8 liquidated damages, the amount in controversy for this claim would be **\$1,596,720.00**
9 (\$10.00 x 79,693 x 2).

10 **B. Unpaid Overtime Claim**

11 33. By way of her second cause of action, Plaintiff and the putative class⁵
12 seek allegedly unpaid wages at overtime wage rates pursuant to California Labor Code
13 §§ 510, 1194, and 1198. (Compl. ¶¶ 41-49.) Plaintiff alleges that she and the putative
14 class members incurred unpaid overtime compensation, by working in excess of eight
15 hours per day and/or in excess of 40 hours in a week. (Compl. ¶¶ 42, 58.) However,
16 Plaintiff does not state the amount of unpaid overtime she and the putative class
17 worked each week. Further, Plaintiff alleges that Defendants maintained a systematic,
18 company-wide policy and practice of failing to pay employees for all hours worked,
19 including overtime. (Compl. ¶¶ 4.) Plaintiff also alleges that Defendants “typically
20

21 ³ Note that the California minimum wage increased to \$10.50 per hour in 2017 and to
22 \$11.00 in 2018.

23 ⁴ Note that Plaintiff could also recover liquidated damages, which equal another
24 \$741,780. See Cal. Lab. Code §§ 1194.2, 1197.1. Thus, the potential amount in
25 controversy for Plaintiffs’ minimum wage claim in this scenario would likely exceed
26 **\$1,483,560.00**.

27 ⁵ Note that the putative class, as defined by Plaintiff, includes non-exempt drivers that
28 are subject to Department of Transportation regulations, and therefore possibly
exempt from overtime compensation. Accordingly, for purposes of the calculating the
amount in controversy for Plaintiff’s overtime claim, only 384 putative class members
(634 – 250 non-exempt drivers) and 50,203 workweeks (79,693 – 29,490 truck driver
workweeks) will be considered. (See Miranda Decl., ¶¶ 6-7.)

1 scheduled her to work 5 days per workweek, and between 8 to 11 hours each
2 workday,” [Compl. ¶14], and goes on to further allege that “Plaintiff’s experience
3 working for Defendants was typical and illustrative.” (Compl. ¶ 15.)

4 34. To determine the monetary amount in controversy for Plaintiff’s
5 overtime claim, the total number of unpaid hours worked by Plaintiff and the putative
6 class that would have been considered overtime hours is multiplied by one and one-
7 half times their respective regular rates of pay rate in effect during the time the
8 overtime was allegedly worked. *See* Cal. IWO 9-2001, §3(A)(1).

9 35. If Plaintiff’s alleged experience is typical of the putative class (as alleged
10 above), a conservative estimate of the amount in controversy for Plaintiff’s overtime
11 claim would equal **\$376,522.50**. This assumes Plaintiff and the putative class seek
12 only half an hour of overtime wages for off-the-clock work per workweek, at overtime
13 rate of \$15.00 (50,203 workweek x 0.5 hours x \$15.00).⁶

14 36. Assuming Plaintiff and the class members are owed one hour of unpaid
15 overtime wages for all workweeks worked during the class period, the amount in
16 controversy for this claim would be **\$753,045.00** (50,203 workweek x 1 hour x
17 \$15.00).

18 **C. Failure to Provide Off-Duty Meal And Rest Periods**

19 37. In support of and by way of her third and fourth causes of action,
20 Plaintiff alleges that “[t]hroughout the statutory period, Defendants have wrongfully
21 failed to provide Plaintiff and the Class with legally complaint [first and/or second]
22 meal periods [... and] wrongfully failed to authorize and permit Plaintiff and the Class
23 to take timely and duty-free rest periods.” (Compl., ¶¶ 18-19, 52 & 56.)

24 38. Plaintiff also alleges that Defendants “typically scheduled her to work 5
25 days per workweek, and between 8 to 11 hours each workday,” [Compl. ¶14], and
26

27 ⁶ This overtime rate is based on California 2016 state minimum wage rate of \$10.00,
28 which is significantly lower than the overtime rate of \$34.55, which is one and one-
half times the average hourly rate of \$23.03.

1 goes on to further allege that “Plaintiff’s experience working for Defendants was
2 typical and illustrative.” (Compl. ¶ 15.)

3 39. Pursuant to the California Court of Appeal’s decision in *United Parcel*
4 *Service Wage & Hour Cases*, 196 Cal. App. 4th 57, 69 (2011), should Plaintiff sustain
5 her burden of proof, Plaintiff and the putative class members could be entitled to one
6 hour of premium pay for a missed meal period and one hour of premium pay for a
7 missed rest break in a single day.

8 1. Plaintiff’s Meal Period Claim

9 40. A conservative amount in controversy for PDI’s alleged failure to
10 provide off-duty meal periods would be approximately **\$3,670,659.58**. Although
11 Plaintiff alleges that she worked 5 days per workweek, and between 8 to 11 hours
12 each workday,” [Compl. ¶14], this number assumes only two missed meal periods per
13 week. If three missed meal periods are assumed, the amount in controversy would be
14 **\$5,505,989.37**. These figures are calculated as follows:

Meal Period Violations			
Per Week	Weeks	Average Rate	Amount in Controversy
2	79,693	\$23.03	$\$3,670,659.58 = 2 \times 79,693$ $\times \$23.03$
3	79,693	\$23.03	$\$5,505,989.37 = 3 \times 79,693$ $\times \$23.03$

21 2. Plaintiff’s Rest Period Claim

22 41. Plaintiff alleges that “Defendants failed to authorize Plaintiff and the
23 Class to take rest breaks, regarding of whether employees worked more than 4 hours
24 in a workday.” (Compl., ¶ 56.) Accepting the allegations that the putative class
25 members missed a rest break in the same way that they missed meal breaks as
26 calculated in ¶40 above, the amount in controversy for putative class members on this
27 cause of action would equal **\$3,670,659.58**, assuming two violations per week, and
28

\$5,505,989.37 assuming three violations per week. These figures are calculated as follows:

Rest Break Violations Per Week	Weeks	Average Rate	Amount in Controversy
2	79,693	\$23.03	$\$3,670,659.58 = 2 \times 79,693 \times \23.03
3	79,693	\$23.03	$\$5,505,989.37 = 3 \times 79,693 \times \23.03

D. Waiting Time Penalties

42. Plaintiff alleges that “[t]hroughout the statutory period, Defendants willfully failed and refused to timely pay Plaintiff and the Class at the conclusion of their employment all wages for all minimum wages, straight time wages, overtime wages, and rest premium wages.” (Compl., ¶ 20; *see also* ¶ 60.) Section 203 provides for one-day’s wages for each day an employee who has separated from his or her employment is not paid all wages owed, up to a total of 30 days’ of wages (“waiting time penalty”). Cal. Lab Code. § 203. California Labor Code is subject to a three-year statute of limitations. *See Pineda v. Bank of America*, 50 Cal. 4th 1389 (2010). Thus, the applicable look-back period for purposes of calculating waiting time penalties dates back to May 18, 2018.

43. Based on PDI’s payroll data, an estimated 192 putative class members have separated their employment with PDI since May 18, 2018. (Miranda Decl., ¶ 8.) Thus, the amount in controversy with respect to Plaintiff’s fifth cause of action for waiting time penalties is **\$1,061,222.40**, which is calculated as follows: 192 separated putative class members x \$23.03 an hour x 8 hours x 30 days.

E. Wage Statements

44. Plaintiff also alleges that “[t]hroughout the statutory period, Defendants [intentionally and willfully] failed to furnish Plaintiff and the Class with accurate,

1 itemized wage statements” because the wage statements provided failed to correctly
2 identify the gross wages earned by Plaintiff and the Class, failed to list the true total
3 hours worked by the employee, and failed to list the true net wages earned in violation
4 of California Labor Code §226(a). (Compl., ¶¶ 21 & 67.) The statutory penalty for
5 such a violation is \$50 for the first pay period, and \$100 for each subsequent pay
6 period, up to a total maximum of penalty of \$4,000. Cal. Lab. Code §226(e).
7 California Labor Code §226(e) has a one-year statute of limitations. *Blackwell v.*
8 *SkyWest Airlines, Inc.*, 245 F.R.D. 453, 462 (S.D. Cal. 2007).

9 45. PDI pays its non-exempt employees on a weekly basis. (Miranda Decl.,
10 ¶ 6.) Therefore, there are 52 pay periods per year. While Defendants deny the validity
11 and merit of Plaintiff’s claims, for purposes of removal only, Defendants determine
12 the amount in controversy by applying the maximum penalty recoverable to
13 employees that worked more than 41 workweeks. During the one year statute of
14 limitations period from May 18, 2017 to present, PDI employed approximately 471
15 putative class members. (Miranda Decl., ¶ 9.) Of those 471 employees, 358
16 employees were employed for 41 or more workweeks. The remaining 113 employees
17 were employed for a total of 2,045 workweeks.

18 46. Based on amount of penalties that Plaintiff would be entitled to recover
19 under section 226 of the California Labor Code, the fact that employees are paid on a
20 weekly basis, and that the one-year statute of limitations would permit Plaintiff to
21 recover penalties for the time period commencing May 18, 2017, the amount in
22 controversy for this claim is **\$1,630,850.00**. The amount is calculated as follows: For
23 the 358 employees who worked 41 or more workweeks during the statutory period,
24 their penalties are capped at the statutory dollar amount of \$4,000 per employee,
25 which equals \$1,432,000.00. The estimated penalties for the remaining 113
26 employees who worked less than 41 workweeks equals \$198,850.00 (113 x \$50 for
27 the first penalty) + (2,045-113 for subsequent violations x \$100). Added together, the
28 potential amount in controversy for Plaintiff’s claim for wage statement violations is

\$1, 630,850.00.

47. The aggregate amount in controversy exceeds the \$5,000,000 jurisdictional minimum:

Plaintiff's Claims	Amount in Controversy
Unpaid Minimum Wages & Unpaid Straight Time Wages	\$741,780.00 to \$1,593,860.00
Unpaid Overtime Claim	\$376,522.50 to \$753,045.00
Meal Break Premiums	\$3,670,659.58 to \$5,505,989.37
Rest Break Premiums	\$3,670,659.58 to \$5,505,989.37
Waiting Time Penalties	\$1,061,222.40
Wage Statement Penalties	\$1,630,850.00
TOTAL (exclusive of attorneys' fees)	\$11,151,694.06 to \$16,050,956.14

48. Indeed, were damages exposure extended through trial, the totals would be even higher. *Mejia v. DHL Express (USA), Inc.*, 2015 U.S. Dist. LEXIS 67212, *6, 2015 WL 2452755 (C.D. Cal. May 21, 2015) (where the Complaint does not cut off class allegations as of the date the complaint was filed, including post-filing time in removal computations is consistent with the allegations in the complaint and permissible).

49. Moreover, Plaintiff seeks attorneys' fees and costs in his Complaint (Compl., Prayer for Relief.) It is well-settled that claims for statutory attorneys' fees are to be included in the amount in controversy. *See, e.g., Kroske v. U.S. Bank Corp.*, 432 F.3d 976, 980 (9th Cir. 2005), *cert. denied*, 127 S. Ct. 157 (2006); *Galt G/S v. JSS Scandinavia*, 142 F.3d 1150, 1155-1156 (9th Cir. 1998) (attorneys' fees may be taken into account to determine jurisdictional amounts). The attorneys' fees benchmark in the Ninth Circuit is 25%. *Paul, Johnson, Alston & Hunt v. Graelty*, 886 F.2d 268, 272 (9th Cir. 1989) ("We note with approval that one court has concluded that the "bench

1 mark" percentage for the fee award should be 25 percent.”) (citation omitted.); *Lo v.*
2 *Oxnard Euro. Motors, LLC*, 2012 US. Dist. LEXIS 73983 at *9 (“The Ninth Circuit
3 has accepted as a benchmark for an attorneys' fees awards a twenty-five percent of the
4 common fund recovery.”)

5 50. Removal of this action is therefore proper as the aggregate value of
6 Plaintiff's class causes of action for unpaid overtime and minimum wage, unpaid meal
7 and rest periods premiums, final wages not timely paid, non-compliant wage
8 statements, and attorneys' fees is well in excess of the CAFA jurisdictional
9 requirement of \$5 million. *See* 28 U.S.C. § 1332(d)(2).

10 **VIII. NOTICE TO PLAINTIFF AND STATE COURT**

11 51. Contemporaneously with the filing of this Notice of Removal in the
12 United States District Court for the Central District of California, written notice of
13 such filing will be served by the undersigned on Plaintiff's Counsel of Record and a
14 copy of the Notice of Removal will be filed with the Clerk of the Superior Court of
15 California, County of Alameda.

16 Dated: June 28, 2018

17
18 /s/ Carlos Jimenez
19 CARLOS JIMENEZ
20 KIMBERLI A. WILLIAMS
21 LITTLER MENDELSON, P.C.
22 Attorneys for Defendants
23 PRAXAIR, INC. and PRAXAIR
24 DISTRIBUTION, INC.
25
26
27
28

23 Firmwide:155500641.2 045147.1350